

Official Form 417A (12/15)

CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF
NEW YORK

[Caption as in Form 416A, 416B, or 416D, as appropriate]

2017 MAR 10 P 3:41

NOTICE OF APPEAL AND STATEMENT OF ELECTION**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s): Eric Richmond
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff☐ Defendant☒ Other (describe) Affected Party/
Party in interest

For appeals in a bankruptcy case and not in an adversary proceeding.

☐ Debtor☐ Creditor☐ Trustee☒ Other (describe) Affected Party/
Party in interest**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from: 1-13-42125-cec Doc 196
2. State the date on which the judgment, order, or decree was entered: 02/02/17

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

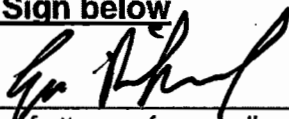
1. Party: P.B. #7, LLC Attorney: Glenn P. Warmuth
2 Eighth Street
Farmingville, NY 11738
Phone: 631-732-2000
2. Party: 231 Fourth Avenue
Lyceum, LLC Attorney: David Blum
11 Park Place 10th Fl
New York, NY, 10007
Office (212) 947-9416

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below



Date: 03/09/2017

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Name, address, and telephone number of attorney (or appellant(s) if not represented by an attorney):

2107 Regent Place

Brooklyn, NY 11226

646 256 9613

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF
NEW YORK

CIVIL COVER SHEET

2017 MAR 10 P 3:40

This form is REQUIRED for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.

IN RE: Bankruptcy Case No. 13-42125(cec) Adv. Pro. No. (if applicable) _____

Bankruptcy Appeal

APPELLANTS

Eric Richmond,
Movant, Affected Party

APPELLEES

P.B. #7, LLC

ATTORNEYS (FIRM NAME, ADDRESS, TEL. NO.)

Eric Richmond - Pro Se
2107 Regent Place

ATTORNEYS (IF KNOWN)

Glenn P. Warmuth
Stim & Warmuth, P.C.
2 Eighth Street
Farmingville, NY 11738

BASIS OF JURISDICTION: Federal Question

CAUSE OF ACTION - 28:1334 Bankruptcy Appeal (*Write brief statement of cause.*)

Court misidentified movant,
Court misidentified the basis of the motion,
Court failed to address arguments cases and facts raised in motion

NATURE OF SUIT: 422 Bankruptcy Appeal (801)

RELATED CASE(S) IN DISTRICT COURT, IF ANY

DISTRICT JUDGE _____

DOCKET NUMBER _____

CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVED:

- ☐ 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT
☐ 2. SAME ISSUE OF FACT OR GROWS OUT OF THE SAME TRANSACTION
☐ 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT COPYRIGHT OR TRADEMARK

Date: 03/09/2017

Signature of Attorney of Record: _____
 [or Appellant Pro Se]

FOR COURT USE ONLY

APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CIVIL COVER SHEET, Bankruptcy Appeal (cont'd)

Did the cause of action arise in Nassau or Suffolk County? NO

If YES, please indicate which county: _____

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

YES ☐

NO ☒

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

YES ☐ (If yes, please explain)

NO ☒

Please provide your bar code and e-mail address below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number, or any other four-digit number registered by the attorney with the Clerk of Court. This information must be provided pursuant to local rule 11.1(b) of the local civil rules.

Attorney Bar Code: PRO SE --

E-Mail Address: gowanusx@gmail.com

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11

231 Fourth Avenue Lyceum, LLC,

Case No. 13-42125-cec

Debtor.
-----X

ORDER DENYING THE DEBTOR'S MOTION

WHEREAS, on February 2, 2017, 231 Fourth Avenue Lyceum, LLC (the "Debtor") filed a motion seeking to vacate a state court order (the "State Court Order") and for an open public hearing on judicial notice of undisputed facts (the "Motion"); and

WHEREAS, the Debtor is currently, and was at the time of the filing of the Motion, a limited liability company not represented by counsel; and

WHEREAS, a corporation, or limited liability company, must be represented by counsel (Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 22-23 (2d Cir. 1983)); and

WHEREAS, the Debtor has requested that this Court vacate the State Court Order pursuant to Fed. R. Civ. P. 60(b)(4); and

WHEREAS, Fed. R. Civ. P. 60(b)(4) does not provide authority for this Court to vacate an order issued by another court; and

WHEREAS, this case was dismissed on September 5, 2014; and

WHEREAS, in order to consider the Motion it would be necessary to vacate the order dismissing this case (See In re Critical Care Support Servs., 236 B.R. 137, 140 (E.D.N.Y. 1999), see also Cole v. Household Financial, et al. (In re Cole), 382 B.R. 20, 24 (Bankr. E.D.N.Y. 2008)); and

WHEREAS, no grounds exist to vacate the order dismissing this case; and

WHEREAS, the property which was the subject of the State Court Order was sold on or about October 23, 2014, and is no longer property of the Debtor; and

WHEREAS, this matter is therefore moot;

NOW, THEREFORE, it is hereby

ORDERED, that, after due consideration, and for all of the above reasons, the Debtor's Motion is denied in its entirety; and it is further

ORDERED, that the hearing on the Motion that was scheduled for March 9, 2017 at 2:00 p.m. is marked off; and it is further

ORDERED, that the Court certifies pursuant to 28 U.S.C. § 1915(3) that any appeal from this order would not be taken in good faith.

**Dated: Brooklyn, New York
February 6, 2017**



Carla E. Craig

Carla E. Craig
United States Bankruptcy Judge